

**STAFF REPORT
C46**

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08/23/18
PRC 7027.1
J. Holt

**ACCEPTANCE OF A LEASE QUITCLAIM DEED AND ISSUANCE OF A
GENERAL LEASE – RECREATIONAL AND PROTECTIVE STRUCTURE USE**

LESSEE:

Victor Dallari, Jr. and Susan Boyles

APPLICANT:

Anthony Joseph Vivilacqua

PROPOSED LEASE:

AREA, LAND TYPE, AND LOCATION:

Sovereign land located in the Sacramento River, adjacent to 2261 Garden Highway, near Sacramento, Sacramento County.

AUTHORIZED USE:

Use and maintenance of an existing floating boat dock, boat lift, gangway, four pilings, and bank protection.

LEASE TERM:

10 years, beginning June 1, 2018.

CONSIDERATION:

Floating boat dock, boat lift, gangway, and four pilings: \$323 per year, with an annual Consumer Price Index adjustment.

Bank protection: The public benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

SPECIFIC LEASE PROVISIONS:

1. Liability insurance in an amount no less than \$1,000,000 per occurrence.
2. Lessee agrees and acknowledges hazards associated with sea-level rise may require additional maintenance or protection strategies regarding the improvements on the lease premises.

STAFF REPORT NO. **C46** (CONT'D)

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On August 14, 2012, the Commission authorized a General Lease — Recreational and Protective Structure Use to Victor Dallari, Jr. and Susan Boyles ([Item C12, August 14, 2012](#)). That lease will expire on May 31, 2022. On November 17, 2016, the upland parcel was deeded to Anthony Joseph Vivillacqua. The Applicant is applying for a General Lease – Recreational and Protective Structure Use, for use and maintenance of an existing floating boat dock, boat lift, gangway, four pilings, and bank protection in the Sacramento River. The Lessee will execute a quitclaim deed, releasing its interest in the lease area effective May 31, 2018. Staff recommends acceptance of the quitclaim deed as stated above and issuance of a new lease effective June 1, 2018. Rent has been paid through May 31, 2018. Therefore, staff recommends the new lease begin on June 1, 2018.

The proposed lease area contains the same facilities as the prior lease, consisting of a floating boat dock, boat lift, gangway, four pilings, and bank protection. These facilities are designed for recreational boating purposes and shoreline protection. The floating boat dock and appurtenant facilities have existed at this location for many years. Recreational boating is a water-dependent activity and is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust lands (Pub. Resources Code, § 6503.5). The bank protection will maintain and improve the integrity of the Sacramento River channel, which will help protect the Public Trust resources of the Sacramento River for recreational and navigational use by the public.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to

STAFF REPORT NO. C46 (CONT'D)

compensate the people of the State for the occupation of the public land involved.

Climate Change:

Climate change impacts, including sea-level rise, more frequent and intense storm events, and increased flooding and erosion, affect both open coastal areas and inland waterways in California. The lease area is located on the Sacramento River, which at this location is a tidally-influenced site vulnerable to flooding at current sea levels; therefore, this area would be at a higher risk of flood exposure given future projection scenarios of sea-level rise. Improvements within the lease area include a floating boat dock, gangway, boat lift, four pilings, and bank protection.

By 2030, California's coast could see up to 1 foot of sea-level rise (from year 2000 levels), 2 feet by 2050, and possibly more than 5 feet by 2100 (National Research Council 2012). This effect could increase the Sacramento River's inundation levels within the lease area. Rising sea levels can lead to increased flooding through regular inundation and larger flooding events when combined with tidal events and storm surges. These climate change and sea-level rise impacts can also affect erosion and sedimentation rates through increased wave action and scour, which in turn, can lead to decreased shoreline stability and structure. In addition, as stated in *Safeguarding California* (California Natural Resources Agency 2014), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms (especially when coupled with sea-level rise).

Climate change could have a number of impacts for this region. The amount and timing of snowmelt runoff will likely change such that runoff pulses are earlier in the season and stronger precipitation events will occur over a shorter period of time. This potential outcome is because warming temperatures will result in more water falling as rain rather than snow, earlier spring snowmelt, and less snowpack overall. In rivers and tidally-influenced waterways, more frequent and powerful storms can result in increased flooding conditions and damage from storm created debris. In addition, there will be greater amounts of runoff because less water will be trapped at higher altitudes in snowpack. Conversely, climate change induced droughts could decrease river levels and flow for extended periods of time. Climate change and sea-level rise will further influence coastal and riverine areas by changing erosion and sedimentation rates. In rivers and tidally-influenced waterways, flooding and storm flow will likely increase scour, decreasing bank stability.

STAFF REPORT NO. **C46** (CONT'D)

The floating boat dock, boat lift, and gangway are adaptable to variable water levels, allowing them to rise and fall with storms and droughts, increasing their resiliency to some climate change impacts, but may require more frequent maintenance to ensure continued function during and after storm seasons and to avoid dislodgement of dock facilities. The pilings and bank protection may need reinforcement to withstand higher levels of flood exposure. The bank is also vegetated, which provides additional stability and reduces the amount of erosion and scour pressure it may experience during future events because of the underground root system created from the vegetation. Regular maintenance, as required by the terms of the lease, will reduce the likelihood of severe structural degradation or dislodgement.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to effects of climate change.

Conclusion:

For all the reasons above, staff believes the issuance of this lease is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Acceptance of the quitclaim deed is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

3. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

STAFF REPORT NO. **C46** (CONT'D)

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the acceptance of a lease quitclaim deed and issuance of the proposed lease will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

AUTHORIZATION:

1. Authorize acceptance of a quitclaim deed, effective May 31, 2018, of Lease No. PRC 7027.1 a General Lease – Recreational and Protective Structure Use, issued to Victor Dallari, Jr. and Susan Boyles.
2. Authorize issuance of a General Lease – Recreational and Protective Structure Use to the Applicant beginning June 1, 2018, for a term of 10 years, for the use and maintenance of an existing floating boat dock, boat lift, gangway, four pilings, and bank protection, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration for the floating boat dock, boat lift, gangway and four pilings: \$323, with an annual Consumer Price Index adjustment; consideration for the bank protection: the public benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; and liability insurance in an amount no less than \$1,000,000 per occurrence.

EXHIBIT A

PRC 7027.1

LAND DESCRIPTION

A parcel of tide and submerged land situate in the bed of the Sacramento River, lying adjacent to Swamp and Overflowed Land Survey 828 patented April 5, 1869, County of Sacramento, State of California and more particularly described as follows:

All those lands underlying an existing floating boat dock, boat lift, gangway and four pilings lying adjacent to that parcel described in Grant Deed, recorded November 17, 2016 in Book 20161117 at Page 0192 in Official Records of said County.

TOGETHER WITH any applicable Impact Area(s).

ALSO TOGETHER WITH that land lying immediately beneath any bank protection structure adjacent to said parcel.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the left bank of said river.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 02/28/2018 by the California State Lands Commission Boundary Unit



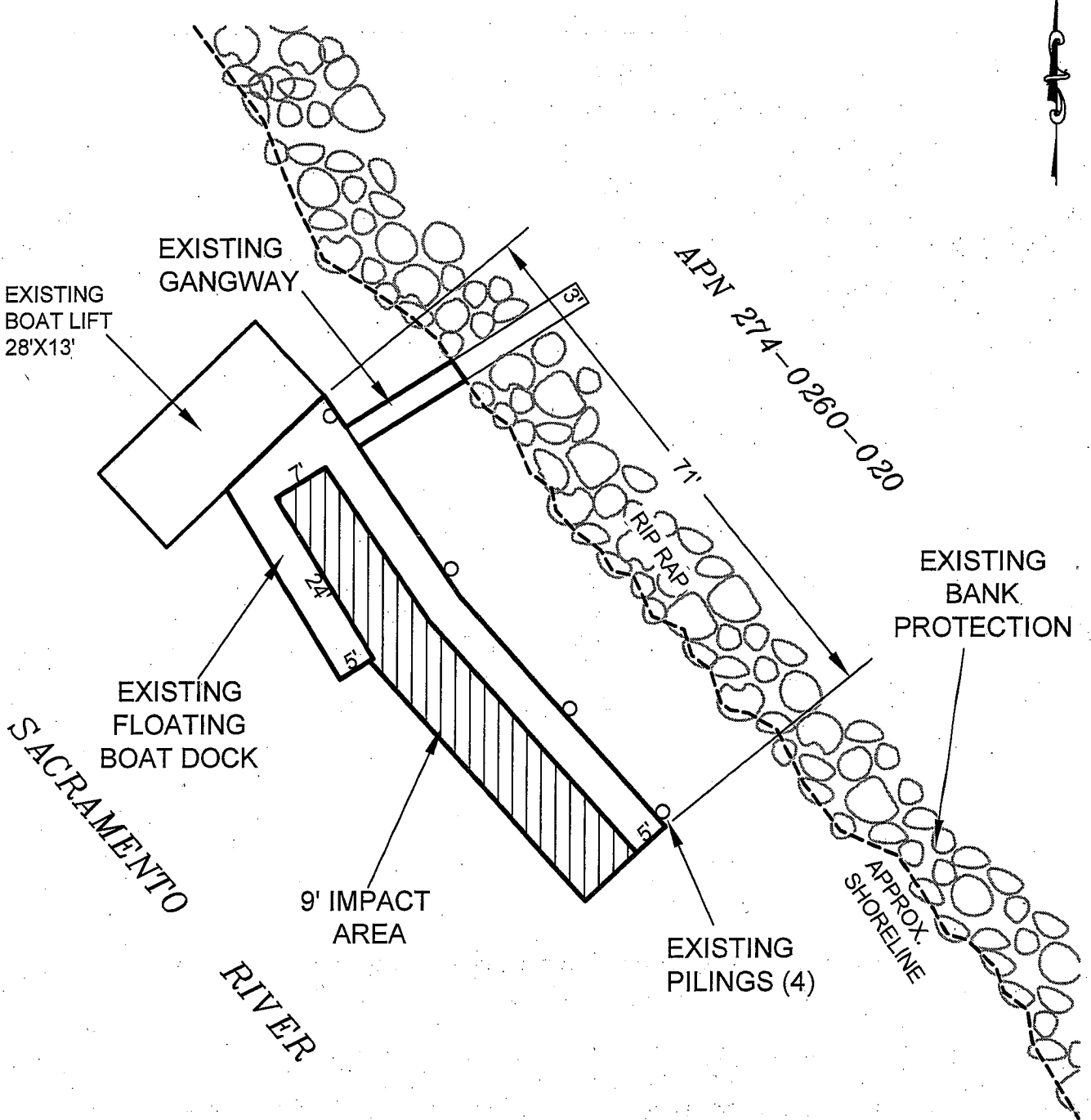
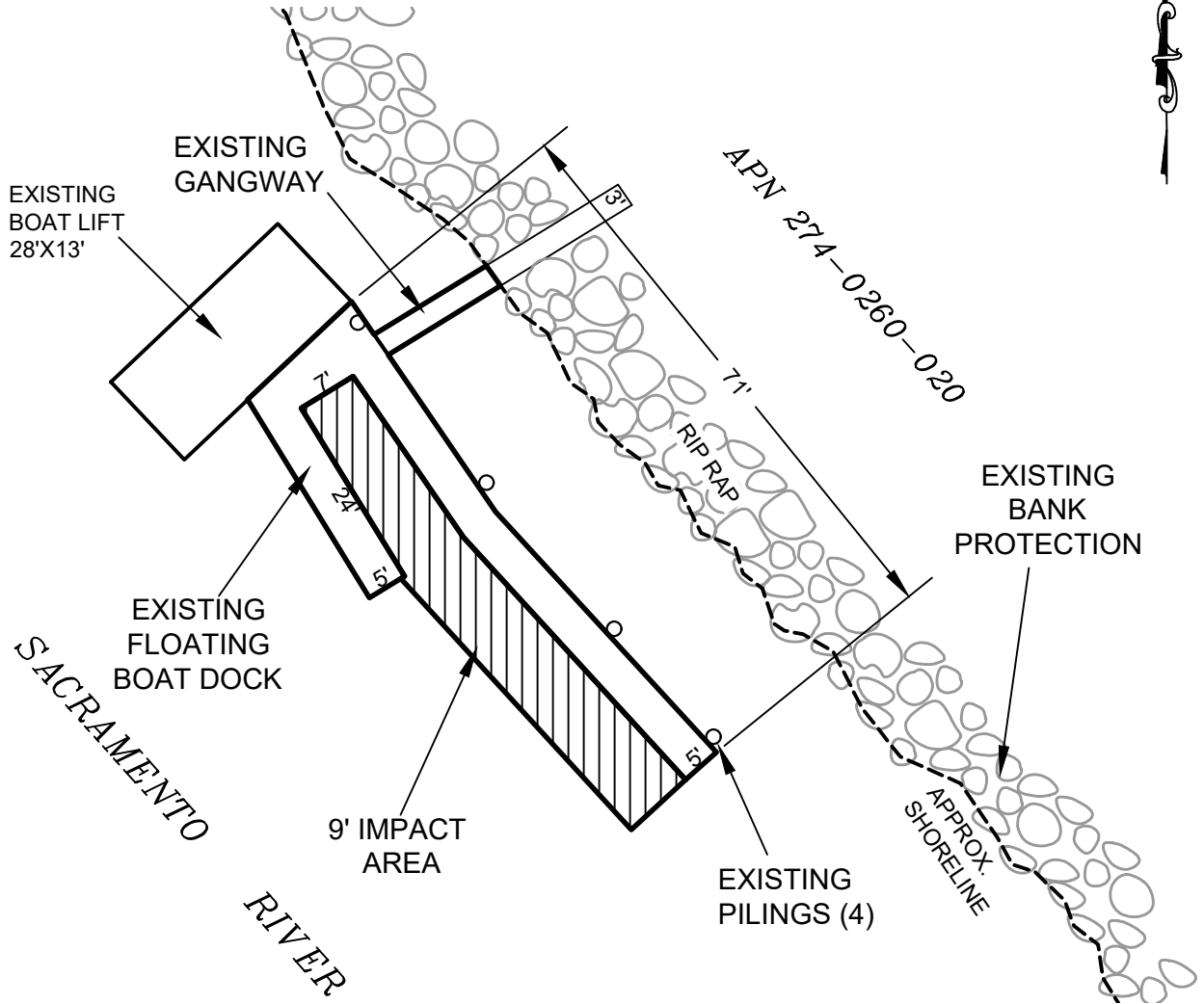


EXHIBIT A



NO SCALE

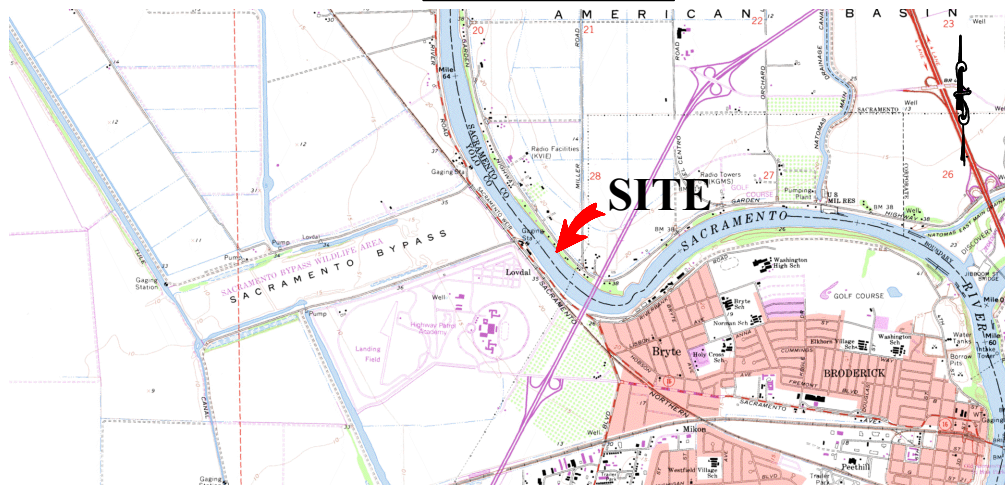
SITE



2261 GARDEN HIGHWAY, SACRAMENTO

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 7027.1
 VIVILACQUA
 APN 274-0260-020
 GENERAL LEASE-
 RECREATIONAL & PROTECTIVE
 STRUCTURE USE
 SACRAMENTO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.